DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 085

NURSING FACILITIES/LICENSING – GENERALLY

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CHAPTER 411
DIVISION 85

NURSING FACILITIES/LICENSING – GENERALLY

411-085-0000 Statement of Purpose
(Amended 8/1/2004)

The purpose of these rules (OAR 411, divisions 85-89) is to establish requirements for nursing facilities that promote quality care and maximization of personal choice and independence for residents. Whenever possible, care shall be directed toward returning the resident to his/her own residence or to the least restrictive alternative environment within the shortest time possible.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615

411-085-0005 Definitions
(Amended 06/28/2015)

Unless the context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, and 89:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Abuse" means:

> (a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries a reasonable and prudent individual is able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.

(c) Sexual contact with a resident, including fondling, caused by an employee, agent, or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another individual, borrowing resident funds, spending resident funds without the resident's consent, or if the resident is not capable of consenting, spending resident funds for items or services from which the resident is unable to benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal abuse as prohibited by federal law, including the use of oral, written, or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment, or deprivation, directed toward the resident.

(g) Corporal punishment.

(h) Involuntary seclusion for convenience or discipline.

(3) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.

(4) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that

are designed to maintain or improve physical and mental well-being and social skills.

(5) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(6) "Applicant" means the individual required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes a sole proprietor, each partner in a partnership, or a corporation that operates a nursing facility on behalf of the nursing facility business owner.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

(8) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(9) "APD" means "Aging and People with Disabilities."

(10) "Assessment" means a written evaluation of a resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(11)"Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences of the resident.

(12)"Certified Medication Aide" means "certified medication assistant" as defined in this rule.

(13)"Certified Medication Assistant" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.

(14) "Certified Nursing Assistant" means an individual who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

(15) "Change of Operator" means "change of ownership" as defined in this rule.

(16) "Change of Ownership" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include, but are not limited to:

(a) A change in the form of legal organization of the licensee;

(b) Transfer of the title to the nursing facility enterprise by the owner to another party;

(c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;

(d) If the licensee is a partnership, any event that dissolves the partnership;

(e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or

(f) Any other event that results in a change of the operating entity.

(17) "Control Interest" means "management" as defined in this rule.

(18) "Day Care Resident" means an individual who is not bedfast who receives services and care in a nursing facility for not more than 16 hours per day.

(19) "Department" means the Department of Human Services (DHS).

(20) "Drug" has the same meaning set forth in ORS chapter 689.005.

(21) "Entity" means "Individual" as defined in this rule.

(22) "Establish a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

(23) "Facility" means an establishment that is licensed and certified by the Department as a nursing facility.

(24) "Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under ORS 441.277 to 441.323 or the appointment of a temporary manager under ORS 441.333 for a nursing facility or a residential care facility.

(25) "Health Care Facility" means a health care facility as defined in ORS 442.015, a residential care facility as defined in ORS 443.400, and an adult foster home as defined in ORS 443.705.

(26) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.

(27) "Incident of Ownership" means:

(a) An ownership interest;

(b) An indirect ownership interest; or

(c) A combination of direct and indirect ownership interest.

(28) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(29) "Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the state, or a political subdivision or instrumentality, including a municipal corporation.

(30) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

(31) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department, or a "Type B" Area Agency on Aging and includes, but is not limited to, a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, or complaint investigation.

(32) "Legal Representative" means an attorney at law, the individual holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, any individual appointed by a court to manage the personal or financial affairs of a resident, or an individual or agency legally responsible for the welfare or support of a resident other than the facility.

(33) "Licensed Nurse" means a registered nurse or a licensed practical nurse.

(34) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.

(35) "Licensee" means the applicant to whom a nursing facility license has been issued.

(36) "Local Designee of the Department" means the local unit of the Department or the Area Agency on Aging.

(37) "Long Term Care Facility" means "nursing facility" as defined in this rule.

(38) "LPN" means "licensed practical nurse" as defined in this rule.

(39) "Maintain a Nursing Facility" means "establish a nursing facility" as defined in this rule.

(40) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(41) "Management" means:

(a) Possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of, an institution, organization, or agency; or

(b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.

(42) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed as a nursing facility;

(c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed, such as, rooms that are proposed to be licensed as nursing facility resident rooms, but are not currently licensed as nursing facility resident rooms;

(d) A major alteration to an existing building;

(e) An addition to an existing building;

(f) A conversion in use; or

(g) Renovation or remodeling of an existing building.

(43) "NFPA" means "National Fire Protection Association".

(44) "Nurse Aide" means "nursing assistant" as defined in this rule.

(45) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.

(46) "Nursing Assessment" means evaluation of fluids, nutrition, bowel or bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.

(47) "Nursing Assistant" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes, but is not limited to, a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.

(48) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(49) "Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides medical services, including nursing services, but excluding surgical procedures, and that provides care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that may not be delegated to an unlicensed individual. "Nursing Facility" only includes facilities licensed and operated pursuant to ORS 441.020(2).

(50) "Nursing Facility Administrator" means an individual licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility.

(51) "Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted thereunder.

(52) "Nursing Home" means "nursing facility" as defined in this rule.

(53) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in a facility.

(54) "The Office of Licensing and Regulatory Oversight (OLRO)," through its Nursing Facility Licensing and Survey Units, is the DHS office responsible for the licensing, inspections, surveys, sanctions, and enforcement for non-compliance of nursing facilities, and with APD, is jointly responsible for policy development.

(55) "Owner" means an individual with an ownership interest.

(56) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.

(57) "Pharmacist" has the same meaning as set forth in ORS 689.005.

(58) "Pharmacy" has the same meaning as set forth in ORS 689.005.

(59) "Physician" means an individual licensed under ORS chapter 677 as a physician.

(60) "Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.

(61) "Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.

(62) "Prescription" has the same meaning as set forth in ORS 689.005.

(63) "Public or Private Official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(c) Employee of the Department, Oregon Health Authority, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility;

(d) Individual who contracts to provide services to a nursing facility;

(e) Peace officer;

(f) Clergy;

(g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;

(h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;

(i) Senior center employee;

(j) Information and referral or outreach worker;

(k) Any public official who comes in contact with elderly individuals in the performance of the official's official duties;

(l) Firefighter or emergency medical technician;

(m) Legal counsel for a resident; or

(n) Guardian for, or family member of, a resident.

(64) "Registered Nurse (RN)" means an individual licensed under ORS chapter 678.

(65) "Rehabilitative Services" means specialized services provided by a therapist or a therapist's assistant to a resident to attain optimal functioning, including, but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.

(66) "Relevant Evidence" means factual information that tends to either prove or disprove the following:

(a) Whether abuse or other rule violation occurred;

(b) How abuse or other rule violation occurred; or

(c) Who was involved in the abuse or other rule violation.

(67) "Resident" means an individual who has been admitted, but not discharged from a facility.

(68) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.

(69) "Restorative Nursing" means "restorative services" as defined in this rule.

(70) "Restorative Services" mean the measures provided by nursing staff and directed toward re-establishing and maintaining a residents' fullest potential.

(71) "RN" means "registered nurse" as defined in this rule.

(72) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of a resident's independence.

(73) "Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation and there is no court-appointed individual, then a significant other means a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions they are not entitled to make on behalf of a resident.

(74) "Suspected Abuse" means reasonable cause to believe abuse may have occurred.

Stat. Auth.: ORS 410.070, 441.055, 441.615, 441.637
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637, 441.650

411-085-0010 Issuance of License
(Amended 06/28/2015)

(1) No person acting individually or jointly with any other person shall establish, conduct, maintain, manage, or operate a nursing facility without a license from the Department.

(2) Each nursing facility license issued by the Department applies only to person or persons named on the license. The license is not transferable or assignable. The license is valid only for the specific premises designated on the license and for the time period specified on the license.

(3) A license may not be issued for a new facility, an expanded facility, or a facility offering new services unless the Oregon Health Authority has issued a certificate of need for said facility or service, or has determined a certificate of need is not required.

(4) APPLICATION FOR INITIAL LICENSURE AND LICENSE RENEWAL.

(a) The application must be on a form or forms provided by the Department and must include all information requested by the Department including, but not limited to, identity and financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more or 10 percent of a lease agreement for the facility. Facilities applying for Medicaid, Medicare, or both Medicaid and Medicare certification are required by federal law to identify applicants representing a 5 percent or more interest.

(b) If the owner of the nursing facility business is a different entity from the operator of the nursing facility, an application for licensure is required from both the operator and the owner. Only one license fee is required. Each application must be signed and dated by a legally authorized representative of the entity submitting the application. The names of owners and operators shall appear on the license.

(c) The applicant must identify any person who has 10 percent incident of ownership, direct or indirect, in a pharmacy or in any business that provides services or supplies to nursing facilities. If any such person exists, the applicant must identify the person and the name and address of the pharmacy or business.

(d) The applicant must identify the number of beds the facility is presently capable of operating considering existing equipment, ancillary service capability, and the physical requirements as specified within OAR chapter 411, divisions 85-89. The number of beds requested to be licensed may not exceed the number identified on the license to be renewed unless prior approval has been issued by the Department or a certificate of need has been issued when required pursuant to ORS chapter 442.

(e) The applicant must include a floor plan showing the location of each bed and the dimensions and room number of each room in which a bed is located. The plan must also show the location of dining and activities areas, shower and tub rooms, toilet rooms, clean and dirty utility rooms, therapy service areas, laundry areas, and dietary service areas. After the first filing, plans need only be submitted when changes in the information required in this subsection occur or when requested by the Department.

(f) The applicant must include a copy of all leases, management, and ownership of the facility.

(g) The applicant must list all states in which the applicant or persons having a 10 percent or more incident of ownership in the facility currently are or previously have been licensed to provide long-term care.

(h) If a renewal is desired, the licensee must apply at least 45 days before the expiration date of the existing license.

(i) The license fee must accompany the application.

(j) If the applicant fails to provide complete and accurate information on the application, the Department may deny or revoke the license if the Department determines the missing or corrected information is needed to determine if a license shall be granted.

(k) An application is not considered to be complete until all requested information and signatures have been provided.

(l) Each application for a new license (excludes license renewal) must include a completed and signed credit and background check authorization form for the applicant and each person with 10 percent incident of ownership in the applicant.

(m) Applicants for license renewal must provide the Department with a completed and signed credit and background check authorization form for the applicant and each person with incident of ownership in the applicant, when required by the Department.

(n) Applications must state whether or not the applicant and persons with incident of ownership in the applicant, have ever been convicted of a crime associated with operation of a health care facility or agency under federal law or the laws of any state.

(o) Applicants must provide such other information and documentation as the Department may reasonably require for proper

administration of these rules including, but not limited to, information about ownership interest in other business enterprises, if relevant.

(p) The Department shall issue the license or issue a denial of licensure within 60 days of receipt of the license fee, completed application, and after determination of substantial compliance with the on-site inspection.

(5) DEMONSTRATED CAPABILITY.

(a) Before issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing care in a manner consistent with the requirements of the rules in OAR chapter 411, divisions 85-89.

(b) The Department may consider the background and qualifications of any person owning 10 percent or more interest in the nursing facility operation when determining whether an applicant may be licensed.

(c) The Department may consider the applicant's history of compliance with Department rules and orders, including the history of compliance of each person with a 10 percent or more incident of ownership in the applicant.

(d) Any person with a past or present interest of 10 percent or more incident of ownership in any nursing facility operation shall be considered responsible for acts occurring during, and relating to, the operation of the nursing facility for the purpose of licensing.

(6) SEPARATE BUILDINGS. Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same ownership or management.

Stat. Auth.: ORS 410.070, 441.025, 441.060
Stat. Implemented: ORS 441.025, 441.060

411-085-0013 New Applicant Qualifications
(Amended 06/28/2015)

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds 10 percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal, but including all changes of ownership) must meet the following criteria:

(1) CRIMINAL HISTORY. Each applicant must complete a Criminal History Clearance conducted by the Department in accordance with OAR chapter 407, division 007. The Department conducts the fitness determination. If determined "unfit," applicants may appeal as described in OAR 407-007-0330.

(2) PERFORMANCE HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill or disabled persons and was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years.

(b) Be free of incident of ownership history in any nursing facility in any state that was involuntarily terminated from licensure or certification, or voluntarily terminated during any state or federal termination process, during the past five years.

(c) Be free of history of termination of licensure as a nursing facility administrator or health care provider during the past five years.

(d) Failure to demonstrate required performance history may result in the Department's denial of a license.

(3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years.

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, or other costs necessary for facility operation, during the past five years.

(c) Have a record of good credit as evidenced by a Department credit check.

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement and other verifiable documentary evidence of fiscal solvency, documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered to be "liquid assets," but may be considered to be "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A joint escrow account with the Department;

(C) A performance bond; or

(D) Any other method satisfactory to the Department.

(e) Provide a pro forma (revenues, expenditures, and resident days) by month for the first 12 months of operation of the facility and

demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) EXPERIENCE. If an applicant does not have experience in the provision of nursing facility care, the applicant must employ the services of a consultant with experience in the provision of nursing facility care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of the Department. Costs incurred for such consulting services are not an allowable cost for Medicaid reimbursement.

(5) DEMONSTRATION OF RIGHT TO PROPERTY AND BUSINESS. The applicant must demonstrate that they have the legal right to possess the nursing facility property and operate the nursing facility business. Examples include, but are not limited to:

(a) If purchasing the property, the applicant must include documentation demonstrating clear title and current right to possess the property; and

(b) If leasing the facility property, or planning to operate it under a management agreement, the applicant must provide all legal documents needed to demonstrate the right to possess the property and operate the business.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.025, 441.055, 441.615

411-085-0015 License Expiration, Termination of Operation, License Return
(Amended 06/28/2015)

(1) EXPIRATION. Effective May 16, 2011, unless revoked or terminated earlier, or issued for a shorter specified period, each license to operate a nursing facility expires annually, following the date of issue.

(2) TERMINATION OF OPERATION. Except as otherwise provided in this rule, if facility operation is discontinued for any reason, the license shall expire. The licensee has appeal rights under ORS chapter 183.

(3) INACTIVE LICENSE.

(a) When the licensee proposes to replace an existing (original) licensed nursing facility with a new building, the Department may grant the licensee an inactive license for up to 24 months after closure of the original facility (departure of the last resident) under the following conditions:

(A) The existing facility may not meet the physical environment requirements for new construction in OAR chapter 411, division 087;

(B) The licensee must comply with the Oregon Health Authority's certificate of need process, including the physical environment requirements for new construction;

(C) The licensee must submit to the Department a written request for an extension to continue the license, an application for license renewal, and the license fee before the annual renewal date;

(D) The licensee must comply with plan review as described in OAR 411-087-0010 and all other applicable requirements; and

(E) The licensee's written request must include information that assures the Department that the new facility shall provide an improved quality of care that is needed in the community and is determined by the Department to be in the public's interest.

(b) The licensee must provide written notice of intent to apply for an inactive license at least 30 days before closure of the original building. This notice must be provided to the Department and every licensed nursing facility, assisted living facility, and residential care facility within 20 miles of the proposed new building site.

(c) The licensee must provide a minimum of two written progress reports to the Department regarding the status of the new building.

(A) The first report must be received by the Department between six and nine months after the original facility is closed.

(B) The second report must be received by the Department between 18 and 21 months after the original facility is closed.

(4) EXTENSION. If the licensee fails to open the new building within 24 months of the closure of the original facility, the Department may extend the inactive license for an additional 18 months. The licensee must submit written request to the Department for an extension before expiration of the inactive license. The following must be included in the request for extension:

(a) NOTICE TO NEARBY FACILITIES. A statement certifying that the licensee has made a reasonable attempt to provide written notice to each nursing, assisted living, and residential care facility within 20 miles of the site of the proposed facility of the intent to request an extension. Upon request, the Department shall provide a list of the names and addresses of all nursing, assisted living, and residential care facilities in the state.

(b) SITE PLAN. A completed site plan that has been submitted to the local jurisdiction (city or county planning agency).

(c) ARCHITECTURAL DRAWINGS. Working architectural drawings that have been stamped or prepared by a licensed architect.

(d) BUILDING SITE. Evidence that the land proposed for the new building is under control of the licensee.

(e) LOCAL JURISDICTION COMMUNICATION. Evidence of continued contact with the local jurisdiction.

(f) FINANCIAL COMMITMENT. Evidence of financial commitments towards completion of the project, including proof of lender commitments and cash on hand sufficient to complete the construction.

(g) CONSTRUCTION CONTRACTS. Construction contracts or other evidence showing the project shall be completed before the expiration of the extended inactive license.

(5) RETURN OF LICENSE. Each license certificate must be returned to the Department immediately upon issuance of a final order revoking or suspending the license. If a license is terminated voluntarily or involuntarily because operation has been discontinued, the license certificate must be immediately returned to the Department.

Stat. Auth.: ORS 410.070, 441.025, 441.060
Stat. Implemented: ORS 441.025, 441.060

411-085-0020 License Fees, Special Assessment
(Amended 7/1/2010)

(1) LICENSE APPLICATION FEES.

(a) License application fees may not be prorated for a partial year. The annual license fee is:

(A) For 1 to 15 beds: $180

(B) For 16 to 49 beds: $260

(C) For 50 to 99 beds: $520

(D) For 100 to 150 beds: $670

(E) For more than 150 beds: $750

(b) All monies received shall be deposited in the Quality Care Fund.

(2) SPECIAL TRUST FUND ASSESSMENT.

(a) Whenever the Department determines that the balance in the Facility Fund created by Oregon statute is less than the amount established by the statute, a special assessment is levied against all licensees. The special assessment shall be pro-rated (based upon the annual fee of the licensee) in order to result in collection of an amount that shall result in a Facility Fund balance of no more than the amount set by the statute. In no event may the special assessment be greater than the annual license fee. The special assessment may be levied only once each calendar year.

(b) Monies are disbursed from the Facility Fund in accordance with ORS 441.277 to 441.323.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.020, 441.055, 441.303, & 441.615

411-085-0025 Change of Ownership or Operator and Closure
(Amended 04/01/2014)

(1) CHANGE OF OWNERSHIP OR OPERATOR.

(a) When a change of ownership or a change of operator is contemplated, a licensee and a prospective licensee must each notify the Department in writing of the contemplated change. The notice of change of ownership or operator must be received by the Department at least 45 days prior to the proposed date of transfer. A shorter timeframe may be allowed at the sole discretion of the Department. The notice of change of ownership or operator must be in writing and must include the following:

(A) Name and signature of the current licensee;

(B) The name of the prospective licensee;

(C) The proposed date of the transfer;

(D) Type of transfer (e.g., sale, lease, rental, etc.); and

(E) A complete, signed nursing facility application from the prospective licensee.

(b) A prospective licensee may not assume possession or control of a facility until after the prospective licensee has been notified by the Department that the prospective licensee's application has been approved.

(c) The current licensee is responsible for the operation of the facility and resident care provided therein until a new license is issued to a new owner or operator or the facility operation is closed.

(2) FACILITY CLOSURE.

(a) NOTICE OF INTENT TO CLOSE. The licensee must notify the Department of the intent to close a facility 90 days prior to the anticipated date of closure.

(b) SERVICES AND OPERATION DURING CLOSURE. The licensee is responsible for the operation of the facility and resident care provided therein until all residents are transferred and the facility is closed.

(c) RESIDENT RECORDS. The licensee is responsible for the transfer and retention of resident clinical records according to OAR 411-086-0300.

(d) PROPOSED RESIDENT TRANSITION PLAN.

(A) The nursing facility administrator must submit a proposed resident transition plan to the Department for review and

approval 75 days prior to the anticipated date of closure. The proposed resident transition plan must:

(i) Include resident-specific transition plans based on current and accurate assessments of each resident's needs, preferences, and best interests;

(ii) In collaboration with the Department, identify potential transition settings that are available and appropriate in terms of quality, services, and location;

(iii) In collaboration with the Department, include a proposed time table for resident assessments, planning conferences, and transitions;

(iv) Include the resources, policies, and procedures that the facility must provide or arrange in order to plan and implement the transitions; and

(v) Include a list of the residents to be transitioned, including each resident's current level of care, a brief description of any special needs or conditions, and the name and address of the resident's guardian (if applicable). The list of residents to be transitioned must include:

(I) Residents that are eligible to return to the facility following hospitalization as described in OAR 411-088-0050; and

(II) Residents that are temporarily absent from the facility and have secured a bedhold as described in OAR 411-070-0110.

(B) Resident transitions must comply with OAR 411-088-0020(1)(f) and OAR 411-088-0070(1)(g), (3)(d), and (4) (Transfers).

(e) PROPOSED FACILITY CLOSURE PLAN. The nursing facility administrator must submit a proposed facility closure plan to the

Department for review and approval 75 days prior to the anticipated date of closure. The proposed facility closure plan must include:

(A) A description of operations during the closure period;

(B) The plan to assure adequate staff, supplies, and services necessary to provide resident care during the closure period;

(C) The primary contact responsible for daily facility operations during the closure period;

(D) The primary contact responsible for the oversight of those managing the facility during the closure period;

(E) The Department-approved estimated date of closure; and

(F) The address where the licensee may be reached following facility closure.

(f) ADDITIONAL INFORMATION. Upon request, the administrator must provide the Department with any additional information related to resident transfer or facility operations during the closure period.

(g) DEPARTMENT APPROVAL. The Department shall notify the facility of the Department's approval within 10 days of receipt of the facility's proposed resident transition plan and facility closure plan.

(A) If the Department disapproves a proposed plan, the Department shall work with the facility to modify the plan.

(B) No residents may be transitioned until the Department approves the proposed plan or until a modified plan is agreed upon.

(C) If a plan is not approved or agreed upon within 30 days of receipt of the intent to close, the Department may initiate actions for temporary management according to OAR 411-089-0075.

(D) The Department may provide or arrange for resident transitions in order to minimize resident trauma and to ensure the orderly transition of residents.

(h) NOTICE TO RESIDENTS AND OTHER REQUIRED PARTIES. The administrator must provide written notice in accordance with OAR 411-088-0070(1)(g), (3)(d), and (4).

(3) ADMISSIONS.

(a) The administrator must assure that the facility does not admit new residents on or after the date the 60-day notice is issued to the resident and required parties according to OAR 411-088-0020(1)(f) and 411-088-0070(1)(g), (3)(d), and (4).

(b) A resident who is eligible to return to a facility following hospitalization per OAR 411-088-0050 may return to a facility that is in the process of closing.

(c) A resident who is eligible to readmit to a facility following discharge per OAR 411-088-0060 may readmit to a facility that is in the process of closing.

(d) A resident who is temporarily absent from a facility per OAR 411-070-0110 may return to a facility that is in the process of closing.

Stat. Auth.: ORS 410.070, 441.055, & 441.615
Stats. Implemented: ORS 441.055 & 441.615

411-085-0030 Required Postings
(Amended 06/28/2015)

(1) PUBLIC NOTICES:

(a) Content. Public notices required to be posted include:

(A) The most recent licensing and, if applicable, certification survey reports;

(B) The placard provided by the Department that includes information on reporting of abuse and summarizes the nursing facility rules. In addition to the location specified in subsection (1)(b) of this rule, this placard must also be prominently and conspicuously posted in close proximity to each nursing station and in any area where residents are admitted;

(C) The current week's menu and activities schedule;

(D) The facility license and the administrator's license. (It is recommended the titles and names of the administrator, the DNS, the Social Services Director, the Activities Director, the Dietary Services Supervisor and the RN Care Manager(s) are also posted);

(E) Waivers received from the Department pursuant to OAR 411-085-0040 and 411-087-0030, and waivers of any federal regulations; and

(F) Any other notice relevant to residents or visitors required by state or federal law.

(b) Location. The facility shall designate a specific area where notices listed in subsection (1)(a) of this rule must be posted. The location shall be in an area that:

(A) Is routinely accessible and conspicuous to residents and visitors, including those in wheelchairs; and

(B) Provides sufficient space for prominent, conspicuous display of each notice.

(2) NOTICES FOR STAFF. The facility must post the names of registered nurses as required by OAR 411-086-0020 and any physician available for emergencies as required by OAR 411-086-0200 at each nursing station.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.055, 441.067, 441.615

411-085-0040 Alternative Methods, Waivers
(Amended 06/28/2015)

(1) APPLICATION. While all nursing facilities are required to maintain compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications, or the conducting of pilot projects or research. Requests for waivers to the rules must:

(a) Be submitted to the Department in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) Describe the special circumstances relied upon to justify the waiver;

(d) Describe what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate the proposed waiver is desirable to maintain or improve the quality of care for the residents, maintains or improves resident potential for self-direction and self-care, and is not going to jeopardize resident health and safety; and

(f) Identify the proposed duration of the waiver.

(2) APPROVAL PERIOD. Upon finding that the licensee has satisfied the conditions of this rule, the Department may grant a waiver for a specified period of time, not to exceed a period of three years.

(3) REVOCATION. The Department may revoke any waiver or variance issued by the Department immediately upon finding that the facility's operation under the waiver or variance has endangered, or if continued may endanger, the health or safety of one or more residents.

(4) IMPLEMENTATION. The facility may implement a waiver only after written approval from the Department.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.055, 441.615

411-085-0050 Hospital-Based Nursing Facilities
(Amended 8/1/2004)

Facilities that are physically connected to and operated by a licensed general hospital will be considered to be in compliance with the following Oregon nursing facility requirements:

(1) Requirements for policies, procedures and quality assurance programs if such policies, procedures and programs exist for both hospital and nursing facility.

(2) Requirements for full-time staff positions, departments and committees if the hospital has similar positions/departments/committees that address needs in the nursing facility.

(3) Requirements for a drug room or pharmacy if the hospital has a pharmacy or drug room available to the nursing facility 24 hours per day.

(4) Rules requiring specific training for the DNS and the RN Care Manager until January 1, 1990.

(5) Requirements that the administrator be full-time in the nursing facility if the nursing facility has 40 or fewer licensed beds. The administrator, however, must work full-time, based on time spent on both the hospital and nursing facility responsibilities, and must be available to nursing facility staff on a full-time basis.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615

411-085-0060 Specialty Nursing Facilities
(Amended 06/28/2015)

(1) APPLICATION. Facilities that have successfully obtained from the Oregon Health Authority a certificate of need for "specialty long-term care beds" pursuant to OAR 333-610 must make application to the Department for licensure as a "Specialty Nursing Facility" in accordance with OAR 411-085-0010.

(2) ISSUANCE OF LICENSE. Licenses shall only be issued to a Specialty Nursing Facility after written notification from the Oregon Health Authority that the facility is eligible for such licensure. The license issued shall state "Specialty Nursing Facility" and shall identify the type of residents and specialized services the facility is authorized to admit and retain.

(3) COMPLIANCE WITH RULES. Specialty Nursing Facilities are required to meet all Oregon Administrative Rules that apply to Nursing Facilities.

(4) ADMISSIONS. Facilities and distinct parts of facilities licensed as Specialty Nursing Facilities must only admit and provide services for residents consistent with the Certificate of Need issued by the Oregon Health Authority.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.055, 441.615

411-085-0200 Licensee, Employees, Consultants
(Amended 3/6/2008)

(1) LICENSEE. The licensee will be responsible for the operation of the facility and the quality of care rendered in the facility.

(2) EMPLOYEES.

(a) Licensure, Registration, Certification Required. All health care personnel working in the facility must be licensed, registered, or certified as required. Documentation thereof is required for all such employees.

(b) Reference Check. The licensee must check and document references for all prospective employees prior to employment.

(c) Job Description. All employees' duties must be defined in writing and maintained in the facility. All employees must be instructed in and perform the duties assigned.

(d) Nursing Personnel. Before employing a registered nurse, licensed practical nurse or nursing assistant, the licensee must contact the Oregon State Board of Nursing and inquire whether the person is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the person or any substantiated abuse findings against a nursing assistant.

(e) The licensee must assure a criminal history check is completed on all employees, in accordance with OAR chapter 407, division 007, (Criminal History Checks). A licensee must not employ any individual who is determined to be ineligible to provide services as outlined in OAR chapter 407, division 007.

(3) PROHIBITION OF EMPLOYMENT. The facility must not employ or retain in employment any of the following:

(a) Any person found responsible for abusing, neglecting or mistreating a person receiving long-term care services in a final administrative action that is not under appeal or in a court of law;

(b) Any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; or

(c) Any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.

(4) CONSULTANTS. When consultants are required, a facility will require consultants to file written reports at least quarterly. These reports must include date(s) of visit(s), length of time spent on premises, action taken on previous reports, problems identified, recommendations, staff members contacted, services performed, distribution of reports, and date mailed or delivered. The facility must maintain these quarterly reports in the facility.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055, 441.637 & 441.679

411-085-0210 Facility Policies
(Amended 04/01/2014)

(1) A Quality Assessment and Assurance Committee must develop and adopt facility policies. The policies must be followed by the facility staff and evaluated annually by the Quality Assessment and Assurance Committee and rewritten as needed. Policies must be adopted regarding:

(a) Admission, fees, and services;

(b) Transfer and discharge, including discharge planning;

(c) Physician services;

(d) Nursing services;

(e) Dietary services;

(f) Rehabilitative services and restorative services;

(g) Pharmaceutical services, including self administration;

(h) Care of residents in an emergency;

(i) The referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident;

(j) Activities;

(k) Social services;

(l) Clinical records;

(m) Infection control;

(n) Diagnostic services;

(o) Oral care and dental services;

(p) Accident prevention and reporting of incidents;

(q) Housekeeping services and preventive maintenance;

(r) Employee orientation and in-service;

(s) Laundry services;

(t) Possession of firearms and ammunition;

(u) Consultant services;

(v) Resident grievances; and

(w) Facility closure. The policy must identify an administrator's responsibility to assure compliance with OAR 411-085-0025, OAR 411-088-0020(1)(f), and OAR 411-088-0070(1)(g), (3)(d), and (4).

(2) Each policy must be in writing and must specify the date the policy was last reviewed by the Quality Assessment and Assurance Committee.

Stat. Auth.: ORS 410.070, 441.055, & 441.615
Stats. Implemented: ORS 441.055 & 441.615

411-085-0220 Quality Assurance
(Amended 8/1/2004)

(1) QUALITY ASSESSMENT AND ASSURANCE COMMITTEE. Each facility must have a Quality Assessment and Assurance Committee. The committee must include the administrator, medical director, Director of Nursing Services (DNS), consulting pharmacist and at least one other facility staff person. The committee must:

(a) Ensure a quality assurance program is conducted as required in this rule;

(b) Adopt facility policies as identified in OAR 411-085-0210;

(c) Ensure a pharmaceutical services review is completed as required by OAR 411-086-0260(2);

(d) Ensure that an infection control program as identified in OAR 411-086-0330 is conducted; and

(e) Meet no less often than quarterly.

(2) QUALITY ASSURANCE. The Quality Assessment and Assurance Committee must conduct an annual review of care practices to ensure quality. The review must include:

(a) Evaluation of resident audits (biannual physical examination of a representative sample of facility residents). The sample must include a minimum of 20 percent of the residents or ten residents, whichever is greater;

(b) Clinical records, including medication administration and treatments;

(c) Resident nutritional status, including weights, intake, and output;

(d) Care plans to ensure that care needs have been identified and addressed;

(e) The services and functions required by the policies listed in OAR 411-085-0210; and

(f) Actions taken to resolve identified problems and to prevent their recurrence.

(3) DOCUMENTATION. All meetings of the Quality Assessment and Assurance Committee must be documented. Documentation must include a listing of those in attendance, length of the meeting, issues discussed, findings, actions, recommendations made and assessment of previous actions and recommendations.

Stat. Auth.: ORS 410.070 & 441.055
Stat. Implemented: ORS 441.055 & 441.615

411-085-0300 Civil Rights
(Amended 8/1/2004)

(1) The facility must not make any distinction, discrimination or restriction based on a resident's, potential resident's or visitor's sex, marital status, race, color, national origin or disability.

(2) The facility must make reasonable accommodations in order to provide services needed by applicants who are disabled.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055 & 441.615

411-085-0310 Residents' Rights: Generally
(Amended 06/28/2015)

The facility must protect, encourage, and assist the resident in exercising the rights identified in OAR 411-085-0300 – OAR 411-085-0350. Each resident and the resident's legal representative, as appropriate, have the right to:

(1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.

(2) Be fully informed, orally and in writing, in a language the resident understands of these rights, and of all facility guidelines for resident

conduct and responsibilities. This must be documented by the resident's written acknowledgment, before or at the time of admission.

(3) Be fully informed, before or at the time of admission and during the resident's stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.

(4) Be fully informed of his or her total health status, including, but not limited to medical status. The resident must be informed of the right to choose his or her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his or her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.

(5) Refuse any medication, treatment, care, or any participation in experimental research unless the resident has been found legally incapable of doing so.

(6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment, and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

(8) Be transferred or discharged only in accordance with the Aging and People with Disabilities transfer and discharge rules in OAR chapter 411, division 088.

(9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects.

(a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days.

(b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment may have a significant adverse impact on the resident's medical or psychological status.

(c) Moving residents on the basis of source of payment is not just cause for intra-facility transfers.

(d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.

(10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.

(11) Be treated with consideration, respect, and dignity and assured complete privacy during treatment and when receiving personal care.

(12) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened, and to have regular access to the private use of a telephone.

(13) Be provided privacy for visits when requested, including meetings with other residents and family groups.

(14) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, Aging and People with Disabilities, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.

(15) Promptly inspect all records pertaining to the resident.

(16) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).

(17) Participate in social, religious, and community activities at the discretion of the resident.

(18) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.

(19) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, the facility, or any person subject to the supervision, direction, or control of the facility, shall not retaliate by:

(a) Increasing charges or decreasing services, rights, or privileges;

(b) Threatening to increase charges or decrease services, rights, or privileges;

(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or

(d) Abusing, harassing, or threatening to abuse or harass a resident.

(20) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.

(21) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

(22) Receive care from facility staff trained to provide care that is specific to the resident’s disease or medical condition.

(23) Receive a modified or special diet that meets the specific requirements of the resident’s disease or medical condition.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.055, 441.600, 441.610, 441.615, 441.700

411-085-0320 Residents' Rights: Charges and Rates
(Amended 8/1/2004)

(1) ADMISSION. The facility must provide written and oral notice before or at the time of admission to each resident specifying:

(a) The base daily rate, or Medicaid rate and, as soon as known, amount of resident liability, as applicable; services provided for that rate, and other charges that might reasonably be expected, including but not limited to medical supplies, pharmaceuticals, incontinence care, feeding, bedhold daily rate, and laundry;

(b) Whether the facility accepts Medicaid reimbursement:

(A) If the facility accepts Medicaid reimbursement, the notice must include a description of the Medicaid eligibility

requirements and who to contact to apply for Medicaid assistance;

(B) If the facility does not accept Medicaid, the notice must include the facility's policy regarding residents who exhaust their private resources and become eligible for Medicaid;

(C) Nothing in this section will be construed to permit discrimination based on payment source; and

(c) Alternative forms of transportation available to the resident for routine and emergency transportation, including information on possible cost and how to access such service(s).

(2) RATE CHANGES. The facility must give 30 days' written notice to all residents of changes in base rates and any other charge.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055, 441.605 & 441.615

411-085-0330 Residents' Rights: Visitor Access
(Amended 8/1/2004)

(1) DEFINITION. As used in this rule, "full and free access" means access to the fullest extent possible without undue adverse interference on the operation of the facility.

(2) FULL ACCESS. The facility must permit individuals and groups full and free access to:

(a) Visit, talk with and make personal, social and legal services available to all residents;

(b) Inform residents of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of distribution of educational materials and discussion in groups and with individual residents;

(c) Assist, advise and represent residents in obtaining public assistance, medical assistance, social security benefits and in

asserting resident rights. Assistance may be provided to residents individually or in groups.

(3) RIGHT TO REFUSE. The resident has the right to refuse contact with any individual or group who otherwise has access to the facility under this rule. The refusal to communicate with any individual or group must be made directly by the resident unless the resident's medical record clearly documents the reasons for not doing so.

(4) SOLICITATION. This rule is not intended to allow access to persons or organizations whose primary purpose is to solicit purchase of services or products, or solicit contributions, from the residents or staff.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055, 441.605 & 441.615

411-085-0340 Residents' Rights: Pharmaceutical Services, Charges for Drugs
(Amended 8/1/2004)

(1) CHOICE OF SUPPLIERS:

(a) The resident must have a choice from among prescription/nonprescription drug delivery systems so long as the system selected:

(A) Provides for timely delivery of drugs;

(B) Provides adequate protection to prevent tampering with drugs;

(C) Provides that drugs are delivered in a unit of use compatible with the established system of the facility for dispensing drugs, whether that system is provided by a facility pharmacy or by a contract with a pharmacy; and

(D) Provides a 24-hour emergency service procedure either directly or by contract with another pharmacy.

(b) The resident must have a choice from among suppliers of nonprescription medication, but no facility is required to accept any opened container of such medication;

(c) If the established system of the facility, whether provided by facility pharmacy or a pharmacy under contract, provides resident profile information (diagnosis, medications and allergies), the pharmacy chosen by the resident under subsection (1)(a) of this rule must also provide that information for any resident it serves at the facility;

(d) The resident must have a choice from among suppliers of nonprescriptive sickroom supplies so long as any items supplied can be maintained in a clean manner with equipment available at the facility;

(e) For purposes of subsections (1)(b) and (c) of this rule, "supplier" includes an authorized representative of the resident who purchases nonprescriptive medication or nonprescriptive sickroom supplies at retail.

(2) CHARGES FOR DRUGS:

(a) If a facility charges residents for drugs, the following must be made available to the resident on request:

(A) Name of the drug;

(B) Amount paid by the facility for the drug;

(C) Amount charged by the facility for the drug; and

(D) Amount of repackaging costs, if any.

(b) If a pharmacy charges any resident's insurance company or other party for a drug administered to a resident in a nursing facility, the pharmacy must provide on request a written bill listing the:

(A) Name of the drug; and

(B) Amount charged by the pharmacy for the drug.

Stat. Auth.: ORS 410.070 & 441.055
Stats. Implemented: ORS 441.055, 441.083, 441.084 & 441.615

411-085-0350 Residents' Rights: Personal Funds
(Amended 06/28/2015)

(1) RESIDENT HELD FUNDS. The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit personal funds with the facility.

(2) FACILITY HELD FUNDS.

(a) Resident Request. The facility must hold, safeguard, manage, and account for the personal funds of the resident when requested in writing. The resident must be fully informed of the facility's system for protecting personal funds. When the resident requests the facility hold such funds, the facility must ensure the request is in writing.

(b) Accounting System. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility. The system may allow resident funds to be pooled together, however, it must preclude any commingling of resident funds with facility funds.

(c) Report to Resident. The facility must provide a copy of the individual financial record to the resident no less often than quarterly and upon the request of the resident. The statement must include the following information:

(A) Identification number and location of the account in which the resident's personal funds have been deposited.

(B) The resident's account balance at the beginning of the statement period.

(C) A listing of each deposit and withdrawal, to and from the resident's account. Each withdrawal must include an explanation of the reason for the withdrawal (e.g., If money is requested by the resident, facility may document "resident request").

(D) The interest earned, if any, and the current interest rate.

(E) The ending balance.

(d) Resident Control of Funds. The facility must take all reasonable precautions to ensure the resident's funds are handled according to the resident's wishes. If the resident's wishes are unable to be determined, funds must be handled in accordance with the best interests of the resident.

(e) Resident Access to Funds. The facility must allow residents access to funds on weekdays, (Monday through Friday, excluding holidays) during business office hours, (no less than six hours per day) and at least two hours per day on all other days.

(f) Funds Under $50. The facility may hold up to $50 for each resident in a non-interest-bearing, petty cash fund. All resident funds held by the facility that are not in the petty cash fund must be deposited in an interest-bearing account as described in subsection (g) of this rule.

(g) Funds $50 and over.

(A) Whenever money held by the facility for a resident exceeds $50, the excess above $50 must, within 7 days of receipt, be deposited in the resident's interest-bearing account, unless the

money is managed in a Trust and Agency Account held by the Department.

(B) If the interest-bearing account for residents is pooled, the facility must have a system that accurately and promptly allocates earned interest to the appropriate resident.

(h) SSI Resource Limit Exceeded. The facility must notify any resident receiving Medicaid benefits whenever his or her account reaches within $200 of the SSI resource limit for one person; and that, if the amount in the account and the value of the resident's non-exempt resources reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(i) Death of Resident. Upon the death of a Medicaid or General Assistance resident with no known surviving spouse, any personal incidental funds held by the facility for the resident must be forwarded to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, OR 97309, within 10 business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed.

(j) Surety Bond. The licensee must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility. The amount of the bond must be sufficient to cover the highest amount of the account with resident funds, plus the petty cash funds, during the previous 12 months.

(3) CHANGE OF OWNERSHIP OR LICENSEE. At the time of a change of ownership or licensee, the new owner or licensee must ensure:

(a) Written Accounting of Funds. Each resident or delegate receives a written accounting of his or her funds held by the facility at the time of the change. A copy of the written accounting for each resident must be provided to the local APD or Type B AAA.

(b) Resident Wishes Respected. That the wishes of each resident regarding management of facility held funds is determined and documented (see OAR 411-070-0095 for Medicaid clients), and that funds held by the prior owner or licensee are transferred to the new owner or licensee, or to another party designated by the resident.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.055, 441.615

411-085-0360 Abuse
(Amended 06/28/2015)

(1) ABUSE IS PROHIBITED. The facility employees, agents, and licensee must not permit, aid, or engage in abuse of residents under their care.

(2) REPORTERS AND MANDATORY REPORTERS. All persons are encouraged to report abuse and suspected abuse. The following persons are required to immediately report abuse and suspected abuse to The Department or law enforcement agency:

(a) Physicians, including any resident physician or intern;

(b) Licensed practical or registered nurses;

(c) Employees of the Department, Area Agency on Aging, county health department, or community mental health program;

(d) Nursing facility employees or any individual who contracts to provide services in a nursing facility;

(e) Peace officers;

(f) Clergy;

(g) Licensed social workers;

(h) Physical, speech, or occupational therapists; and

(i) Family members of a resident, guardians, or legal counsel for a resident.

(3) FACILITY REPORTING OF ABUSE OR SUSPECTED ABUSE.

(a) The nursing facility administration must immediately notify the Department, local designee of the Department, or local law enforcement agency of any incident of abuse or suspected abuse. Physical injury of an unknown cause must be reported to the Department as suspected abuse, unless an immediate facility investigation reasonably concludes the physical injury is not the result of abuse.

(b) The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (for example, rape, murder, assault, burglary, kidnapping, or theft of controlled substances).

(c) The local law enforcement agency must be called if the offices of the Department or designee are closed and there are no arrangements for after hours investigation.

(4) ABUSE COMPLAINT. The oral or written abuse complaint must include the following information when available;

(a) Names, addresses, and phone numbers of alleged perpetrators, residents, and witnesses;

(b) The nature and extent of the abuse or suspected abuse, including any evidence of previous abuse;

(c) Any explanation given for the abuse or suspected abuse; and

(d) Any other information the person making the report believes might be helpful in establishing the circumstances surrounding the abuse and the identity of the perpetrator.

(5) PRIVILEGE. In the case of abuse of a resident, the physician-patient privilege, the husband-wife privilege, and the privileges extended under ORS 40.225 to 40.295 shall not be a ground for excluding evidence regarding the abuse, or the cause thereof, in any judicial proceeding resulting from an abuse complaint made pursuant to this section.

(6) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The facility licensee, employees, and agents must not retaliate in any way against anyone who participates in the making of an abuse complaint, including, but not limited to, restricting otherwise lawful access to the facility or to any resident or, if an employee, to dismissal or harassment.

(b) The facility licensee, employees, and agents must not retaliate against any resident who is alleged to be a victim of abuse.

(c) Anyone who, in good faith, reports abuse or suspected abuse shall have immunity from any liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint. Any such person shall have the same immunity with respect to participating in judicial or administrative proceedings relating to the complaint.

(7) INVESTIGATION BY FACILITY. In addition to immediately reporting abuse or suspected abuse to the Department or law enforcement agency, the facility must promptly investigate all reports of abuse and suspected abuse and must take measures necessary to protect residents from abuse and prevent recurrence of abuse.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.055, 441.615, 441.630, 441.637, 441.640, 441.645, 441.655

411-085-0370 Confidentiality
(Amended 06/28/2015)

This rule applies to facility licensees, employees, and agents, to Department staff, and the staff of all Area Agencies on Aging.

(1) RESIDENTS. The names of residents and all documentation that may allow the identification of a resident must be kept confidential and are not accessible for public inspection.

(2) COMPLAINANTS, WITNESSES. The names and identity of complainants and witnesses referred to in Department complaint investigations must be kept confidential and are not accessible for public inspection.

Stat. Auth.: ORS 410.070, 441.055
Stats. Implemented: ORS 441.637, 441.671